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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO. 9060	
09/970,076	10/03/2001	John A.T. Young	960296.97745		
7590 . 10/06/2004			EXAMINER		
Bennett J. Berson			MINNIFIELD, NITA M		
Quarles & Brady LLP 1 South Pinckney Street			ÁRT UNIT PAPER NUM		
P O Box 2113			1645		
Madison, WI 53701-2113			DATE MAILED: 10/06/2004		

Please find below and/or attached an Office communication concerning this application or proceeding.

			Application No.						
					Applicant(s)				
			09/970,076		YOUNG ET AL.				
Office Action Summary		E	xaminer		Art Unit				
			N. M. Minnifield		1645				
The MA Period for Reply	AILING DATE of this commu	nication appea	rs on the cover s	sheet with the co	rrespondence ac	ldress			
THE MAILING - Extensions of time after SIX (6) MOI - If the period for reference of	ED STATUTORY PERIOD F B DATE OF THIS COMMUN he may be available under the provisions NTHS from the mailing date of this come pely specified above, the maximum soil highin the set or extended period for reply but by the Office later than three months of madjustment. See 37 CFR 1.704(b).	IICATION. s of 37 CFR 1.136(a munication. 30) days, a reply wit tatutory period will a y will, by statute, cat	a). In no event, however thin the statutory minimapply and will expire SI use the application to b	er, may a reply be time num of thirty (30) days X (6) MONTHS from the ecome ABANDONED	ly filed will be considered time te mailing date of this c (35 U.S.C. § 133).	ly. ommunication.			
Status									
1)⊠ Respon	sive to communication(s) file	ed on <u>05 A</u> pril	<u> 2004</u> .						
2a)☐ This action is FINAL . 2b)⊠ This action is non-final.									
	Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under <i>Ex parte Quayle</i> , 1935 C.D. 11, 453 O.G. 213.								
Disposition of CI	aims								
4a) Of th 5) ☐ Claim(s) 6) ☑ Claim(s) 7) ☐ Claim(s)) <u>5,6,211-13 and 19-26</u> is/a ne above claim(s) is/a) is/are allowed.) <u>5,6,211-13 and 19-26</u> is/a) is/are objected to.) are subject to restrict	are withdrawn	from considerat						
Application Pape	ers								
9) The spec	cification is objected to by th	ne Examiner.							
10)∐ The drav	☐ The drawing(s) filed on is/are: a)☐ accepted or b)☐ objected to by the Examiner.								
Applicant	t may not request that any obje	ection to the dra	wing(s) be held in	abeyance. See	37 CFR 1.85(a).				
	ment drawing sheet(s) including					, ,			
	or declaration is objected to	o by the ⊑xan	liner. Note the a	ttached Office A	ction or form P i	O-152.			
Priority under 35	•								
a)□ All b 1.□ Co 2.□ Co 3.□ Co ap	edgment is made of a claim of Some * c) None of: ertified copies of the priority ertified copies of the priority opies of the certified copies oplication from the Internation trached detailed Office action	documents had documents had of the priority onal Bureau (F	ave been receiv ave been receiv documents have PCT Rule 17.2(a	ed. ed in Application e been received)).	n No in this National	Stage			
Attachment(s)				,					
1) Notice of Refere	nces Cited (PTO-892)			erview Summary (P					
2) Notice of Draftsp 3) Information Disc Paper No(s)/Mail	person's Patent Drawing Review (P losure Statement(s) (PTO-1449 or I Date	710-948) PTO/SB/08)	5) 🔲 No	per No(s)/Mail Date otice of Informal Pat her:	 ent Application (PTC)-152)			

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DETAILED ACTION

Response to Amendment

- 1. Applicants' amendment filed April 5, 2004 is acknowledged and has been entered. Claims 1-4, 7-10 and 14-18 have been canceled. Claims 5, 6 and 19 have been amended. New claims 33-36 have been added. Claims 5, 6, 11-13 and 19-26 are now pending in the present application. All rejections have been withdrawn in view of Applicants' amendment and/or comments with the exception of those rejections discussed below.
- 2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
- 3. Claims 5, 6, 11-13 and 19-26 are rejected under 35 U.S.C. 102(e) as being anticipated by Tang et al 6569662.

Tang et al discloses the polynucleotide sequence that encodes the polypeptide that comprises a fragment of SEQ ID NO: 2, 6 8 and 10, see SEQ ID NO: 8 of Tang et al 6569662. Tang et al also discloses methods of producing a protein, vectors and host cells (see cols. 2-3; cols. 9-19).

The prior art anticipates the claimed invention. The prior art anticipates the claimed invention by disclosing the polynucleotide having the same or similar characteristics as claimed. The polynucleotide in the prior art is believed to inherently possess properties which anticipates the claimed invention or if they are not the same the polynucleotide, would none the less render the claims obvious because it possesses similar characteristics and functions in the same manner as

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claimed in the instant application. Thus, the polynucleotide of the prior art is evidenced to meet the limitations of the claimed polynucleotide, in the absence of evidence to the contrary.

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Since the Office does not have the facilities for examining and comparing applicants' polynucleotide with the polynucleotide of the prior art, the burden is on applicant to show a novel or unobvious differences between the claimed product and the product of the prior art (i.e., that the polynucleotide of the prior art does not possess the same material structural and functional characteristics of the claimed polynucleotide) See In re Best, 562 F.2d 1252, 195 USPQ 430 (CCPA 1977) and In re Fitzgerald et al., 205 USPQ 594.

- 4. No claims are allowed.
- 5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to N. M. Minnifield whose telephone number is 571-272-0860. The examiner can normally be reached on M-F (8:00-5:30) Second Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lynette R.F. Smith can be reached on 571-272-0864. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Primary Examiner

Art Unit 1645

NMM

October 4, 2004